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# Medical Recovery Services v. Bonneville Billing and Collections Appellant's Brief Dckt. 39408

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MEDICAL RECOVERY SERVICES,  
PLLC,

Plaintiff-Respondent,

VS.

BONNEVILLE BILLING AND  
COLLECTIONS, INC.,

Defendant-Appellant.

Docket No. 39408

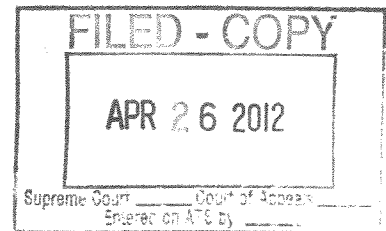
**APPELLANT'S BRIEF**

Appeal from the District Court of the Seventh Judicial District for Bonneville County.

The Honorable Dane H. Watkins, Jr., District Judge presiding.

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### **III. STATEMENT OF THE CASE**

#### **A. Nature of the Case**

This matter was filed by Medical Recovery Services, LLC, (“MRS”), in magistrate court as a complaint for conversion, unjust enrichment and for a constructive trust against Bonneville Billing & Collections, Inc. (“BBC”) for funds BBC received from Western States Equipment Company (“WSEC”) in the amount of \$1,083.21. WSEC had mistakenly sent garnishment checks to BBC rather than to the Bonneville County Sheriff (“BCS”) on a MRS garnishment of Stacy Christ (“Christ”), and BBC had applied the funds to its own accounts against Christ.

#### **B. Course of Proceedings**

On September 18, 2008, MRS filed a complaint in magistrate court against BBC. R. Vol. I, pp. 9-14. Subsequently, over the next two and one-half years BBC prevailed on every motion for summary judgment and every motion for reconsideration before Magistrate Judge Linda J. Cook and Magistrate Judge Stephen A. Gardner. Ultimately, BBC was granted judgment against MRS, the case was dismissed, and BBC was awarded its attorney fees and costs. R. Vol. I, pp. 85-87, 141-143, 144-145; Vol. II., 163-168, 178-183.

On May 3, 2011, MRS filed its appeal to the district court. R. Vol. II., pp. 184-186. On October 6, 2011, the district court reversed the magistrates’ judgments in favor of BBC. R. Vol. II., pp. 241-255. BBC filed a motion for reconsideration which was denied on November 22, 2011. R. Vol. II., pp. 269-270. On November 17, 2011, BBC appealed the matter to this court. R. Vol. II., pp. 266-268.

C. Statement of Facts

BBC, a collection company, received checks from WSEC written on a WSEC account payable to BBC on July 22, 2008, in the amount of \$331.00, on July 28, 2008, in the amount of \$394.83, and on August 12, 2008, in the amount of \$357.38 for a total of \$1,083.21. BBC believed that the payments it received from WSEC's account were a voluntary wage assignment for accounts BBC was pursuing against Christ. Prior to receiving the WSEC checks payable to BBC, BBC knew that WSEC was the employer of Christ. On May 7, 2007, and on February 26, 2008, BBC had been assigned accounts against Christ in the amount of \$325.50 (account # 5413585), and on May 8, 2008, BBC had filed suit against Christ in Bonneville County Case No. CV 08-2669. On April 24, 2008, BBC had been assigned another account against Christ in the amount of \$966.86 (account #5472394). On July 30, 2008, BBC had sent to Christ a demand letter for that account. R. Vol. I., pp. 70-72.

BBC applied \$435.43 from the WSEC checks to account # 5413585, and on August 27, 2008, BBC dismissed Case No. CV 08-2669 and zeroed out the \$300.00 attorney fees sought in the complaint. BBC applied the remaining \$647.78 from the WSEC checks to account #5472394. As there was still a balance owing from Christ, on October 9, 2008, BBC filed suit against Christ in Bonneville County Case No. 08-6263, for account #5472394 for the remaining \$552.22. On December 11, 2008, BBC obtained a judgment for \$1,065.47. This judgment was subsequently satisfied by a continuing wage garnishment from Christ's wages from WSEC. R. Vol. I., pp. 70-72.

On August 20, 2008, Clayne Bodily ("Bodily"), BBC's manager, was contacted by WSEC which indicated to him that payments had mistakenly been sent to BBC for Christ but would now be sent to BCS. Bodily was informed that WSEC had inadvertently written checks to BBC rather than

to BCS on a continuing garnishment of Christ. R. Vol. I., pp. 70-72, 55-56. (On June 4, 2008, MRS, a collection company, had obtained a judgment in the amount of \$1,868.15 against Christ, and on June 12, 2008, MRS had obtained a continuing garnishment against Christ's employer, WSEC. R. Vol. I., pp. 39-50.) Bodily asked WSEC if BBC could keep the WSEC funds for accounts owing by Christ since BBC had already applied the funds to Christ's accounts, and asked WSEC if WSEC could simply continue the garnishment against Christ. When WSEC did not contact BBC with a response Bodily called WSEC and was informed by WSEC that they had been instructed by Bryan D. Smith ("Smith"), attorney for MRS, not to speak with BBC. Smith did not represent WSEC. BBC never refused any request by WSEC to return any money to WSEC because WSEC never requested BBC to return any money to WSEC. R. Vol. I., pp. 70-72, 55-56.

On August 21, 2008, MRS sent a demand letter to BBC demanding the return of the \$1,083.21 BBC had received from WSEC. R. Vol. I., pp. 66-67. On August 28, 2008, BBC responded in writing declining to return the WSEC funds as demanded by MRS. R. Vol. I., p. 69. MRS then discontinued the continuing garnishment with WSEC against Christ, and, further, MRS instructed WSEC to stop payment on a check or to recall a check that had been sent to BCS from WSEC's continued garnishment of the wages of Christ. R. Vol. I., pp. 73-75. From July 2008 through at least April 2009 there was a continuing garnishment of Christ's wages at WSEC. Christ was employed at WSEC during this entire period. R. Vol. I., pp.70-72.

#### **IV. ISSUES ON APPEAL**

1. Did the district court err by reversing the magistrate's judgment in favor of BBC and granting MRS summary judgment on its claim for conversion?

2. Did the district court err by reversing the magistrate's judgment in favor of BBC and granting MRS summary judgment on its claim for unjust enrichment?
3. Did the district court err by reversing the magistrate's judgment in favor of BBC and imposing a constructive trust in favor of MRS?
4. Did the district court err by vacating the magistrate's order regarding attorney's fees against MRS and ordering BBC to return the awarded attorney fees to MRS?
5. Did the district court err by remanding the case for a determination of a reasonable, pre-appeal fee award in favor of MRS and awarding MRS a reasonable award of attorney's fees on appeal?
6. Should BBC be entitled to its attorney fees and costs in this appeal?

## **V. ARGUMENT**

### **A. THE DISTRICT ERRED BY REVERSING THE MAGISTRATE'S JUDGMENT IN FAVOR OF BBC AND GRANTING MRS SUMMARY JUDGMENT ON ITS CLAIM FOR CONVERSION.**

#### **1. The Idaho garnishment statutes control in determining whether MRS has any claim against BBC.**

MRS's claims in this matter arise from Idaho's garnishment statutes. The following unambiguous Idaho statutes deal with garnishments, providing a claim against the garnishee, but not against BBC:

Debts and credits and other personal property not capable of manual delivery must be attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control, belonging to the defendants, are attached in pursuance of such writ.

Idaho Code Section 8-506(5).



All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, at the time of service upon them of a copy of the writ and notice, as provided in the last two (2) sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Idaho Code Section 8-508 (emphasis added).

When the garnishee is the employer of the judgment debtor, the judgment creditor, upon application to the court, shall have issued by the clerk of court, a continuing garnishment directing the employer-garnishee to pay to the sheriff such future moneys coming due to the judgment debtor as may come due to said judgment debtor as a result of the judgment debtor's employment. This continuing garnishment shall continue in force and effect until the judgment is satisfied. . . . .

Idaho Code Section 8-509(b)(emphasis added).

Any person who has been served with a copy of the writ and notice as provided in sections 8-506--8-508, 11-201, 16-603, 16-604, or 16-1104, shall be deemed a garnishee, and service of copy of writ and the notice therein provided for, shall, for the purpose of sections 8-510--8-523, be deemed to be notice of garnishment, and whenever any person shall have been served with notice of garnishment as herein defined, he may discharge himself by paying or delivering to the officer all debts owing by him to the defendant, or a portion thereof sufficient to discharge the claim of the plaintiff, or any or all money of the defendant in his hands to a similar amount, taking a receipt therefor from the officer, which shall discharge such person from any and all liability to the extent of such payment, and which shall be held by the officer subject to the orders of the court out of which the writ issued.

Idaho Code Section 8-510 (emphasis added).

If the garnishee admits in his answer that he is indebted to the defendant, or has money or property of the defendant in his hands, or under his control, and fails or refuses to turn the same over to the officer as in section 8-510 is provided, the plaintiff may move the court out of which the writ issued, on or before the return day thereof, for judgment against the garnishee for the amount of such admitted debt, or for the delivery to the officer of the money or property of the defendant in his hands, to an amount sufficient to satisfy the plaintiff's claim; serving the garnishee with due notice of the said motion; and at the hearing thereof the court shall render such judgment as shall be conformable to law and the facts shown to exist.

Idaho Code Section 8-516 (emphasis added).

When interpreting a statute, this Court must strive to give force and effect to the legislature's intent in passing the statute. *Davaz v. Priest River Glass Co., Inc.*, 125 Idaho

333, 336 (1994). It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.

*McLean v. Maverick Country Stores, Inc.*, 142 Idaho 810, 813 (2006). “Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction.” *State v. Rhode*, 133 Idaho 459, 462 (1999). “The Court interprets statutes according to their plain, express meaning, but will resort to judicial construction when the statute is “ambiguous, incomplete, absurd, or arguably in conflict with other laws.”” *Ada County Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 368 (Idaho 2008). “If the statutory language is unambiguous, we merely apply the statute as written.” *Sumpter v. Holland Realty, Inc.*, 140 Idaho 349, 351 (Idaho 2004).

**2. Pursuant to the garnishment statutes MRS has no property rights in WSEC checks written to BBC by the garnishee WSEC and not in the possession of WSEC.**

“The right of attachment by garnishment was unknown to the common law, and is purely of statutory regulation, and where the statute provides for the procedure in such cases, the plaintiff is only required to pursue such course in order to sustain his action against the garnishee.” *Eagleson v. Rubin*, 16 Idaho 92, 100 (1909). “The remedy by attachment is entirely statutory, and the requirements of the statute must be substantially followed; otherwise, the attaching creditor acquires no superior right or lien upon the debtor’s property.” *American Fruit Growers, Inc. v. Walmstad*, 44 Idaho 786, 792 (1927). Thus, no superior right or lien can be acquired if the statute is not followed.

*Eagleson* provides the following regarding garnishees:

Garnishment is the admonition judicially given to the attachment defendant's debtor or holder of property, warning him against payment or restoration to the defendant, and bidding him hold the property or credit subject to the order of court. It is the process by which the garnishee is brought into court, and also that by which the defendant's credit or property is attached in the garnishee's hands. Its service is constructive seizure by notice. It is

attachment in the hands of a third person.

*Id.* (emphasis added).

With reference to the execution of the writ of attachment C. S., sec. 6784, provides that personal property capable of manual delivery must be attached by taking it into custody. In case of tangible property, susceptible of manual seizure and delivery, such property must be actually seized and taken into possession by the levying officer, and that officer must take and maintain actual custody and control of the property by such means as will exclude others from such custody.

*Id.* at 793.

*In re Loren v. Ducommun*, 159 B.R. 919 (Bkrctcy. D. Idaho 1993), is a case which actually dealt with a wage garnishment, but the district court in this matter chose to simply disagree with it and disregard it. *In re Loren* provides the following:

A garnishment is "the process by which the garnishee is brought into court, and also that by which the defendant's credit or property is attached in the garnishee's hands. Its service is constructive seizure by notice. It is attachment in the hands of a third person." *Eagleson v. Rubin*, 16 Idaho 92, 100 P. 765, 767 (1909) (quoting Waples, Attachment and Garnishment, § 469). Inland is correct in its assertion that service of the writ of garnishment created a lien on the property held in the hands of the garnishee--here, the Sheriff's Department. " 'By the service in the manner provided by statute, whether it be termed 'garnishment' or 'service of the attachment,' while the possession is not necessarily disturbed, 'a lien is obtained on defendant's title to the property in the hands of the garnishee.' " " *Sullivan v. Mabey*, 45 Idaho 595, 264 P. 233, 236 (1928) (quoting *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 43 P. 1111 (1896)). "The plaintiff in the attachment action obtained a lien upon the pledged property in the hands of the pledgee bank by virtue of the garnishment proceedings." *Fed. Res. Bank of San Francisco v. Smith*, 42 Idaho 224, 244 P. 1102, 1103 (1926). See also *Trustee, Ltd. v. Bowen-Hall, Inc.* (In re Pro-Ida Foods, Inc.), 88 I.B.C.R. 219, 221-22 (Bankr.D.Idaho 1988) (noting that garnishment creates a lien for the purpose of an avoidable preference action under 11 U.S.C. § 547).

This does not mean that Inland is entitled to the relief which it seeks. Inland wishes, in effect, to foreclose its lien by garnishing Mr. Ducommun's wages. However, all of the Idaho authorities for the proposition that garnishment creates a lien limit that lien to property actually held by the garnishee. E.g., *Sullivan*, supra, 264 P. at 236 (" '[A] lien is obtained on defendant's title to the property in the hands of the garnishee' ") (emphasis added). Possession by the garnishee is, therefore, a necessary element for existence of the garnishment lien.

This accords with other Idaho law. Garnishment is, as Eagleson noted, "attachment in

the hands of a third person." 100 P. at 767. In the case of *American Fruit Growers, Inc. v. Walmsad*, 44 Idaho 786, 260 P. 168 (1927), a sheriff served a writ of attachment against certain property and issued a proper return, but apparently failed to take possession of the property as the return indicated. Because the attachment statute required the sheriff to take personal possession of the property, the Supreme Court of Idaho held that the attachment failed.

..... the lien thereof was absolutely lost when the [employer] or his keeper permitted appellant to take and retain possession of the property. Even the return of the [employer] does not purport to indicate that he continued in possession, and the evidence is entirely uncontradicted that at least from September 1st to the date of sale this property was out of the control of the officer, and was in no sense in custodia legis. The lien of the attaching creditor, if any he ever had, was dependent upon the continuation of possession by the [employer]. The lien that [creditor] had by virtue of the garnishment was over a portion of those wages that [debtor] earned in May, 1993. Those funds are no longer in the possession of the [employer], the garnishee. There is, therefore, no lien against those funds.

*Id.* at 920-921(emphasis added).

It is clear from the statutes and case law that the garnishee is to pay the sheriff. Continuation of possession is essential to any lien. In this matter the sheriff never obtained possession of the WSEC checks in question from WSEC. The garnishee, WSEC, made payments directly to BBC not to the sheriff. WSEC made payments on its own banking account to BBC. Pursuant to statute the MRS garnishment remained in force and effect until the judgment would have been satisfied. Pursuant to statute WSEC, as the garnishee, remained liable for the judgment. Pursuant to statute WSEC could discharge its liability by paying to the sheriff the amount of the debt. WSEC attempted to comply with the statute by continuing the garnishment, but MRS stopped the garnishment and directed that garnished funds be returned to WSEC.

MRS has no rights in checks written to BBC by the garnishee, WSEC, on WSEC's own bank account. MRS has no lien in WSEC checks which are not in the possession of WSEC, but in the possession of BBC. MRS's claim, if any, is against WSEC as the garnishee. WSEC, as the garnishee, remains liable to MRS until the garnishment is satisfied pursuant to Idaho statute. This is

the plain meaning and intent of the garnishment statutes.

BBC is not the real party in interest. WSEC is the real party in interest. The checks delivered to BBC by WSEC were written on WSEC's account to BBC. WSEC is the owner of the checks in question. It is irrelevant whether WSEC owed any money to BBC. MRS has no rights in checks written to BBC by WSEC on WSEC's own banking account. BBC negotiated the checks prior to demand by MRS for the return of the disputed funds. WSEC never demanded the return of the disputed funds from BBC.

MRS's action is against WSEC as the garnishee which remains liable to MRS until the garnishment is satisfied pursuant to Idaho statute. BBC has never had in its possession any property of MRS. MRS's claims in this matter arise from Idaho's garnishment statutes. MRS's lien on Christ's wages arise from the garnishment statutes. "[T]here is no need for a equitable remedy when a legal remedy is available through the garnishment statutes." *See Iron Eagle Development, L.L.C. v. Quality Design Systems, Inc.*, 138 Idaho 487, 491 (2003).

It is clear that the Idaho garnishment statutes create the right to garnish and lien wages. Although these statutes create the lien upon Christ's wages, the district court did not apply those statutes to the instant case. This district court simply disagreed with *In re Loren* by quoting from *Jaquith v. Stanger*, 79 Idaho 49 (1957), a case involving an action for damages for trespass to the personal property of plaintiff. In *Jaquith* the court stated, in dicta, that "in attaching personal property capable of manual delivery, the officer must actually seize and hold the property to the exclusion of others, in order to create and maintain the lien of attachment." *Id.* At 54. The case did not depend upon the validity of the attachment proceedings against the debtor, or upon the validity of any purported attachment lien in favor of the creditor. *Id.* *Jaquith* also provided that cases relied

upon by the district court “involved contests between the attaching creditor and other encumbrancers or claimants whose rights depend upon the validity or priority of the lien of the attachment. Such a question is not involved in this case.” *Id.*

The district court incorrectly concluded that money was not “personal property” and was not capable of being manually delivered. Personal property is defined as “in a broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate.” Black’s Law Dictionary (9<sup>th</sup> ed. 2009). Hence, money is personal property. Money is capable of manual delivery, i.e. mailing a check. WSEC was to seize and hold the wages, personal property, to the exclusion of others and to forward it (normally by mailing a check) to the sheriff in order to create and maintain the lien of attachment. *See* Idaho Code Section 8-506(5). However, WSEC did not hold the personal property to the exclusion of others. WSEC did not forward a check to the sheriff. A lien is not maintained on checks forwarded to someone other than to the sheriff.

When funds are no longer in the possession of the garnishee there is no lien against those funds. *See In re Loren*, 159 B.R. at 921. The lien is a possessory lien. “[T]he service of the writ of garnishment create[s] a lien on the property held in the hands of the garnishee.” *In re David & Laura Aughenbaugh*, 2002 WL 33939738 (Bkrctcy. D. Idaho)(emphasis added). Idaho Code Section 8-506(5) provides that attachment occurs by a writ for the credits or other personal property in his possession or under his control. Idaho Code Sections 8-508, 8-509(b), and 8-510 direct the garnishee to pay or deliver to the sheriff or officer the wages as they come due.

While MRS may have continued to have a lien upon the future wages of Christ, it had no right or lien on a check written on a WSEC account to BBC, delivered to BBC, and negotiated by BBC. The lien on Christ’s future wages did not terminate until MRS unilaterally terminated it

because the garnishment was a continuing garnishment.

The district court stated that the future earnings of Christ were not capable of manual delivery and could not be taken into custody. However, when those future earnings became present earnings and were, in fact, paid, then they were capable of being delivered to the sheriff. The funds were, therefore, capable of manual delivery to the sheriff. WSEC did not do this. WSEC delivered checks to BBC. Later, WSEC did manually deliver at least one check to BCS on the garnishment for which the lien continued, however, MRS refused to accept the check(s).

Although the garnishment lien is preserved during the continuing garnishment, WSEC still needed to maintain possession of the funds collected in order to preserve the lien as to those funds. Then WSEC had to deliver those funds to the sheriff just as it did when it delivered checks to the sheriff which MRS subsequently refused to accept. If WSEC was no longer in possession of the checks and the sheriff was not in possession of the checks, then there is no possession, and, therefore there is no lien on those checks.

Hypothetically, if WSEC, instead of writing the checks to BBC, had mistakenly written the same checks for the same amounts to Bonneville County Implement (“BCI”) which was owed money by WSEC, then would BCI have been liable to MRS for a conversion? Would BCI be ordered to return the disputed funds to WSEC? The answer would certainly be no. Or, if the money owed to BCI was disputed by WSEC, and WSEC had no intention of paying any amount to BCI would that somehow make any difference? Would BCI then have been liable to MRS for a conversion? It would appear that WSEC would have a claim against BCI over the disputed funds, and MRS would have no interest except against WSEC. In both examples, as in this case, the simple facts are that WSEC issued checks to a third party, WSEC did not maintain possession of the checks, and WSEC

did not deliver the checks to the sheriff. MRS can have no interest in a WSEC check written to any third party, except the sheriff pursuant to statute, and delivered to that third party.

The district court also stated that MRS would be burdened by continuing the garnishment. How can there be a burden to MRS to continue a continuing garnishment? No further action at all is required by MRS to continue a continuing garnishment. By statute the garnishment continues on its own until the judgment is satisfied.

**3. BBC has not converted any property of MRS as MRS has no property or lien rights in this matter.**

Conversion is defined as "a distinct act of dominion wrongfully asserted over another's personal property in denial [of] or inconsistent with [the] rights therein." *Torix v. Allred*, 100 Idaho 905, 910 (1980). "A complaint which alleges that plaintiff is the owner and entitled to the possession of property therein described and that defendant converted it to his own use, and which states the value of the property, or alleges that plaintiff has been damaged in a sum named, sufficiently states a cause of action for conversion, unless other averments are required by statute. *See Williams v. Bone*, 74 Idaho 185, 187-88 (1953)." *Id.*

The only rights MRS can have derive solely from the garnishment statutes. MRS has no lien right or property right because the garnishment statutes were not complied with and possession was not retained. The district court simply ignores this.

Furthermore, BBC had valid, legal accounts assigned to it for which it was pursuing collection against Christ when WSEC sent WSEC checks to BBC. The amount of the accounts assigned to BBC exceeded the amount of the checks it received from WSEC. The checks were written on WSEC's account. WSEC never requested the funds be returned. BBC simply has never



had in its possession any property of MRS. BBC acted reasonably and in good faith in retaining the checks of WSEC and applying them to the accounts of Christ, especially when WSEC, the owner of the checks, never requested their return. BBC had no duty to inquire as to the WSEC checks. BBC had no notice of any UCC filing creating any priority or lien. No lien has attached to WSEC checks written to BBC. There is simply no conversion of MRS property by BBC.

**4. MRS has failed to mitigate its “damages.”**

“[T]he duty to mitigate, also known as the "doctrine of avoidable consequences," provides that a plaintiff who is injured by actionable conduct of a defendant is ordinarily denied recovery for damages which could have been avoided by reasonable acts, including reasonable expenditures, after actionable conduct has taken place. *See Margaret H. Wayne Trust v. Lipsky*, 123 Idaho 253, 261 (1993).” *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 743 (1999).

There was a continuing garnishment of Christ’s wages from at least July 2008 through at least April 2009 and Christ continued to be employed at WSEC during that entire time. MRS discontinued the garnishment against Christ and, in fact, instructed WSEC to stop payment on a check or to recall a check from the BCS for which WSEC had continued to garnish the wages of Christ. WSEC was obligated to continue the garnishment and was continuing the garnishment until instructed by MRS to discontinue it. If MRS had continued its continuing garnishment rather than discontinuing it in order to pursue this litigation, then MRS would have received the equivalent amount that BBC received from WSEC by October 2008 and this matter would be moot. BBC’s retention of WSEC checks written to it by WSEC would have only prolonged MRS’s garnishment by three pay periods or approximately one and one-half months. MRS would have suffered no damage

because it would have received within six weeks the amount MRS sought as damages in its complaint in the amount of the three checks.

Continuing the garnishment would have been a reasonable act for MRS to take, in fact, it would have required no action at all from MRS. MRS would not have incurred any expenditure at all by continuing the garnishment.

MRS had a duty to mitigate its “damages” by continuing the garnishment against Christ with WSEC. However, MRS chose to discontinue the garnishment and told WSEC to stop payment on a check or to recall a check from the BCS which would have gone toward the judgment obtained by MRS against Christ. Additionally, MRS directed WSEC not to speak to BBC, and, as a result, WSEC never requested the return of the funds.

One might wonder why MRS did not mitigate its “damages” by accepting the next three garnishment checks from WSEC rather than stopping the garnishment. MRS had the ability to make itself whole but failed to do so. MRS has failed to mitigate its damages and is not entitled to any relief from the court.

**B. THE DISTRICT COURT ERRED BY REVERSING THE MAGISTRATE’S JUDGMENT IN FAVOR OF BBC AND GRANTING MRS SUMMARY JUDGMENT ON ITS CLAIM FOR UNJUST ENRICHMENT.**

A prima facie case of unjust enrichment consists of three elements: (1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the Defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof. *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 558 (2007)(emphasis added). Unjust enrichment is an equitable claim and

"[e]quitable claims will not be considered when an adequate legal remedy is available." *Iron Eagle Development, L.L.C.*, 138 Idaho at 492.

In this matter MRS did not confer any benefit upon BBC. MRS argues that since it garnished Christ's wages that that act of garnishment conferred a benefit upon BBC. In reversing the magistrate court the district court determined that because MRS had garnished Christ's wages that that conferred a benefit upon BBC. The court stated that "BBC would not have received the funds absent MRS's efforts" and that "absent the writ procured by MRS" the funds would have been sent to Christ instead. If WSEC had complied with the garnishment statutes the checks would have been sent to the sheriff, and BBC would not have received anything. WSEC "failed" to deliver the funds to the sheriff. Idaho Code Section 8-516. The only benefit conferred upon BBC was conferred by WSEC alone. WSEC wrote the checks to BBC. MRS did not direct WSEC to write the checks to BBC. There simply was no benefit conferred upon BBC by MRS.

Using the district court's own logic one would have to conclude that the medical provider who turned over the account to MRS also conferred a benefit upon BBC: for if the medical provider had not turned over the account then MRS would not have garnished Christ, and then WSEC would not have sent WSEC checks to BBC. Using the district court's logic then one would also have to conclude that Christ himself conferred a benefit upon BBC: for since Christ did not pay the medical account it had to be turned over to MRS, who garnished Christ's account, and then WSEC sent WSEC checks to BBC. Using the district court's flawed logic the medical provider and Christ would both be entitled to a claim for unjust enrichment against BBC. It is simply illogical to conclude that MRS conferred any benefit upon BBC. The only benefit conferred upon BBC was by WSEC and no one else.

In the classic, law school, unjust enrichment example A contracts with B to paint B's house, but instead A mistakenly paints C's house. A has conferred a benefit upon C: A painted C's house. A is the only one who has conferred any benefit upon C and can make a claim for unjust enrichment against C. D, who referred B to A, cannot claim that he has conferred a benefit upon C by arguing that if D had not made the referral to B then C's house would not have been painted by A. Nor can E, the mailman, who mistakenly told A that C's house was B's house, claim that he conferred a benefit upon C by arguing that if E had not pointed out the wrong house then A would not have painted C's house. The only one who conferred a benefit upon C is A: A painted C's house.

In this matter the only one who conferred any benefit upon BBC was WSEC: WSEC wrote the checks on WSEC's account to BBC.

The district court incorrectly concluded that the benefit, the checks, conferred by MRS to BBC were the property of MRS. The only interest MRS had in the checks derived from the garnishment statutes. Possession was not maintained and any right MRS had was lost as to those WSEC checks. MRS had no property or lien interest in the checks, and thus no benefit to confer.

It is not inequitable for BBC to have accepted the benefit from WSEC as BBC had accounts for which Christ owed, and as WSEC did not make a demand for the return of the disputed funds. It is not inequitable for BBC to retain the checks received from WSEC as MRS would have still received payment from WSEC under the continuing garnishment which would have satisfied the judgment. MRS could have taken no action at all and received the continuing garnishment payments. However, rather than continuing to accept checks from the sheriff MRS voluntarily discontinued the continuing garnishment which would have satisfied MRS's judgment against

Christ, and instructed WSEC to stop payment on a check or recalled a check from the Bonneville County Sheriff from WSEC which had continued to garnish the wages of Christ.

MRS has an adequate legal remedy against WSEC, the real party in interest, pursuant to Idaho garnishment statutes, and MRS has not mitigated its “damages.” MRS had no benefit to confer on BBC. WSEC conferred the benefit. BBC simply has not been unjustly enriched by MRS.

**C. THE DISTRICT COURT ERRED BY REVERSING THE MAGISTRATE’S JUDGMENT IN FAVOR OF BBC AND IMPOSING A CONSTRUCTIVE TRUST IN FAVOR OF MRS.**

A constructive trust is a "remedial device created primarily to prevent unjust enrichment . . .” *Chinchurreta v. Evergreen Management, Inc.*, 117 Idaho 591, 593 (Ct. App. 1989). Since MRS had no benefit to confer and did not confer any benefit upon BBC, there can be no unjust enrichment. Thus there can be no constructive trust. There is no need for an equitable remedy when a legal remedy is available through the garnishment statutes. *See Iron Eagle Development, L.L.C.*, 138 Idaho at 492. Furthermore, MRS has failed to mitigate its “damages.”

**D. THE DISTRICT COURT ERRED BY VACATING THE MAGISTRATE’S ORDER REGARDING ATTORNEY’S FEES AGAINST MRS AND ORDERING BBC TO RETURN THE AWARDED ATTORNEY FEES TO MRS.**

As the prevailing party at the magistrate level under five separate orders all finding for BBC and against MRS, and issued by two different magistrate judges, BBC was entitled to an award of attorneys fees and costs under Idaho Code Section 12-120(1). Furthermore, MRS failed to timely object to the amount of the award of attorney fees and costs to BBC. In granting this appeal, BBC is the prevailing party and is entitled to its attorney fees and costs.

**E. THE DISTRICT COURT ERRED BY REMANDING THE CASE FOR A DETERMINATION OF A REASONABLE, PRE-APPEAL FEE AWARD IN FAVOR OF MRS AND AWARING MRS A REASONABLE AWARD OF ATTORNEY'S FEES ON APPEAL.**

As MRS is not the prevailing party, MRS is not entitled to any award of attorney fees and costs. Idaho Code Section 12-120(1).


**F. BBC IS ENTITLED TO RECOVER ATTORNEYS FEES AND COSTS ON APPEAL.**

As the prevailing party on appeal, BBC is entitled to an award of attorneys fees and costs pursuant to Rule 35, 40 and 41 of the Idaho Appellate Rules and Idaho Code Section 12-120(1). Accordingly, BBC requests that the court award it its attorney fees and costs in this matter.

**VI. CONCLUSION**

Based upon the record before the Court, the statutes, cited case law precedent, and the arguments presented, BBC respectfully requests that this Court reverse the district court's October 6, 2011, Memorandum Decision Re: Appeal. BBC has converted no property of MRS. BBC has not been unjustly enriched by MRS. A constructive trust should not be imposed. MRS has failed to mitigate its "damages." MRS does not have a claim against BBC upon which relief can be granted. MRS has suffered no damages. MRS is not the real party in interest. MRS's cause of action, if any, is against the garnishee, WSEC. BBC should be entitled to its attorney fees below and on this appeal, and MRS should not be entitled to any attorney fees.

DATED this 25<sup>th</sup> day of April, 2012.



Todd R. Erikson

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 25<sup>th</sup> day of April, 2012, by first class mail:

Bryan D. Smith  
Smith, Driscoll & Associates, PLLC  
PO Box 50731  
Idaho Falls, ID 83405

A handwritten signature in black ink, appearing to read "B.D. Smith", is written over a horizontal line.